



C.R.P. (PD) No.1123 of 2021
and CMP No.8722 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Revision Petition (PD) No.1123 of 2021
and CMP No.8722 of 2021

J.Indira Gandhi

.. Petitioner

Vs.

P.Natarajan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order of the Principal District Munsif, Thiruvannamalai in I.A.No.1159 of 2019 in O.S.No.282 of 2009 dated 09.03.2021.

For Petitioner : Mrs. V.Srimathi
for M/s.V.Raghavachari

For Respondent : Mr. S.Vediappan



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ORDER

The plaintiff in OS No.282 of 2009 challenges the order of the Trial Court made in IA No.1159 of 2019, an application for amendment filed by him seeking to include a prayer for declaration of his title over the suit property.

2. The suit in OS No.282 of 2009 was filed on 04.08.2009 as a simple suit for injunction. The defendant filed a written statement on 19.11.2009 denying the title of the plaintiff. Thereafter the trial commenced in the year 2011 and the plaintiff was examined as P.W.1, he was also cross-examined. Thereafter, P.W.2 was also examined and when the suit was posted for cross-examination of P.W.2, the plaintiff came up with another application in IA No.580 of 2014 seeking leave to withdraw the suit with liberty to file a fresh suit on the same cause of action. That application came to be dismissed on 24.06.2016.



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3. A Revision against the order was also dismissed by this Court.

Thereafter, the plaintiff allowed the suit to be dismissed for non-prosecution on 10.06.2016. Upon an application filed under Section 5, the delay in seeking restoration of the suit was condoned and the suit was eventually restored on 14.10.2019 and it was posted for cross-examination of P.W.2 on 16.10.2019. It is at this juncture, the petitioner has come up with the application in IA No.1159 of 2019 seeking amendment of the plaint incorporate the prayer for declaration.

4. The application for amendment was resisted by the defendant contending that the application filed after commencement of trial without complying with the requirements of proviso to Order 6 Rule 17 cannot be maintained. It was also contended that the main relief sought to be included, namely the relief of declaration was barred by time, inasmuch as there was express denial of title on 19.11.2009 when the written statement was filed.

5. The learned Trial Judge upon a consideration of the claim



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concluded that the application cannot be entertained as the main relief which is sought to be introduced in the suit namely the declaration of title is hopelessly barred by limitation. The learned Trial Judge also faulted the plaintiff for not giving any explanation, as to why the application was not filed earlier in point of time.

6. I have heard Mrs.V.Srimathi, learned counsel appearing for M/s.V.Raghavachari, for the petitioner and Mr.S.Vediappan, learned counsel appearing for the respondent.

7. Mrs.V.Srimathi, learned counsel appearing for the petitioner would submit that the question of limitation cannot be gone into at the time of considering the application for amendment. The Trial Court ought to have allowed the application for amendment and left the question of limitation open to be decided at the time of trial. She would also rely upon the judgment of Karnataka High Court in ***C.R.Janardhan v. N.S.Vinutha and others***, reported in ***AIR 2003 Kant 393***, and the judgment of the Hon'ble Supreme Court in ***Vidyabai and Others v. Padmalatha and another***,



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reported in **(2009) 2 SCC 409**, for the proposition that the trial Court ought not to have considered the question of limitation while considering the application for amendment.

8. Mr.S.Vediappan, learned counsel appearing for the respondent would submit that if the relief claimed is on the face of it barred by limitation no purpose will be served by allowing the amendment and leaving the question of limitation open. He would point out that in written statement was filed on 19.11.2009 denying the title and there arose the cause of action for the plaintiff to sue for declaration. The present application for amendment has been filed nearly after 10 years and therefore the application is hopelessly barred by limitation.

9. No doubt, the Karnataka High Court in **C.R.Janardhan v. N.S.Vinutha and others**, has held that if the question of limitation being a mixed question of fact in law, the Court while considering the amendment application need not go into the question of limitation, it can always allow the amendment and reserve the question of limitation for consideration at a



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later point of time. But in a case where the relief claimed is barred by limitation is *exfacie* clear, I do not think the Court should adopt such a procedure. Allowing the application and reserving the question of limitation at a later point of time would only lead to an unnecessary exercise when it is clear that the relief of declaration is barred by limitation.

10. The judgment in *Vidyabai and Others v. Padmalatha and another*, is in fact against the petitioner. The Hon'ble Supreme Court had held that the language of the proviso is in a mandatory form and the Court will not have jurisdiction to amend the plaint, unless the jurisdictional facts as envisaged in the proviso to Order 6 Rule 17 are found to be existent. In fact, a perusal of the affidavit filed in support of the application for amendment would show that no attempt has been made by the petitioner to at least aver that he could not have filed the application for amendment earlier in point of time, despite exercise of due diligence.

11. I therefore do not see any irregularity or illegality in the order of the Trial Court, the Trial Court cannot be faulted for having dismissed the



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application on the ground that the main relief is barred by limitation. I see no scope for interference in a revision. The Civil Revision Petition therefore fails and it is accordingly **dismissed**. No costs. Consequently the connected miscellaneous petition is closed.

24.11.2021

jv

Index: Yes/No

Internet: Yes

Speaking order/Non Speaking order

To

1. The Principal District Munsif,
Thiruvannamalai.
2. The Section Officer,
V.R.Section,
High Court of Madras.



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R.SUBRAMANIAN, J.

jv

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